



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,539	04/02/2004	Gary L. Bush	GLB002	2517
7590 Jack V. Musgrove 2911 Briona Wood Lane Cedar Park, TX 78613			EXAMINER COCKS, JOSIAH C	
			ART UNIT 3749	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/817,539

Applicant(s)

BUSH, GARY L.

Examiner

Josiah Cocks

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on papers filed through September 14, 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-14, 23-37, 39-41, 50-54 and 56-62 is/are pending in the application.
- 4a) Of the above claim(s) 23-26 and 50-54 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-37, 39-41, 54 and 56-62 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-10 and 12-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination (“RCE”) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's RCE submission filed on July 2, 2007 and the supplemental compliant amendment filed on September 14, 2007 have been entered.

Claim Objections

2. **Claim 1** is objected to because of the following informalities: Line 10 refers generically to “sensed operating parameters” but is clearly intended to refer back to the operating parameters that were previously “sensed” (i.e. in line 8). The recitation in line 10 should be amended to recite “the sensed operating parameters”. Appropriate correction is required.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant has amended each of independent claims 1, 27, and 54 to recite to include one of; the step of “iteratively sensing” (claim 1), at least one

sensor which "iteratively senses" (claim 27), and one or more inputs for "iteratively" receiving sensory data. However, the use of the term "iteratively" in these contexts does not appear in the specification as originally filed.

There examiner notes that it has been held that "[w]hile there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit or inherent disclosure. See MPEP § 2163 (citing *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971)). In this case, the examiner considers that at least the discussion appearing on pages 12-14 as to the incremental adjusting of the frequency in response to current sensory data as compares with previous data is considered to implicitly support the "iteratively" sensing or receiving now recited in claims 1, 27, and 54. The examiner therefore concurs with applicant's assertion on p. 18 of the July 2, 2007 response that "[t]he iterative check of the feedback parameters is described at page 12 lines 19-26." However, applicant must amend the specification to include proper antecedent basis for the recitations in claims 1, 27, and 54.

Election/Restrictions

4. Currently pending claims 1-3, 5-10, 12-14, 27-29, 31-37, 39-41, 54, and 56-62 are allowable. The restriction requirement set forth in the Office action mailed on April 27, 2006, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Accordingly, **claims 4 and 30** are hereby rejoined as requiring all the limitations of one of allowable claims 1 or 27.

In view of the withdrawal of the restriction requirement as set forth above, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Allowable Subject Matter

5. **Claims 1-10, 12-14, 27-37, 39-41, 54, and 56-62** contain allowable subject matter.

6. The following is a statement of reasons for the indication of allowable subject matter: Applicant's amendments and arguments submitted July 2, 2007 and September 14, 2007 have been carefully considered and are found persuasive as to the distinction of applicant's invention as now claimed over prior art previously relied upon, namely the U.S. Patents to Johnson, Kita, and Monette.

Accordingly, in light of the record taken as a whole, the prior art does not disclose, teach or suggest the invention recited in applicant's claims 1-10, 12-14, 27-37, 39-41, 54, and 56-62.

Conclusion

7. This application is in condition for allowance except for the following formal matters:

- Correction of the above noted objection to claim 1.
- Correction to the specification to provide proper antecedent basis for claim terminology.
- Cancellation or other appropriate action for non-elected claims 23-26 and 50-53 (see 37 CFR 1.144).

The prosecution of this case is closed except for consideration of the above matter.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven McAllister, can be reached (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc

November 20, 2007


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749